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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, November 13, 2012, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.

(Public parking is available on the north side until 6:00p.m.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the October 2012 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference Debrief

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. BOARD MEMBER COMMENTS

6. NEW BUSINESS

- a) Nominations for the 2013 CLERB Executive Board

-continued on next page-

7. UNFINISHED BUSINESS

- a) Subcommittee Update

8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

9. SHERIFF / PROBATION LIAISON QUERY

10. CLOSED SESSION

- a) **Request for Reconsideration** – Notice pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report. A Final Report may also be re-opened for reconsideration by the Review Board at the request of the Board of Supervisors or upon initiative of the Review Board when such reconsideration is in the public interest. Every party to the proceeding or their representative(s) shall be notified of any request or proposal for reconsideration and shall be given the opportunity to respond to the Review Board before the request or proposal is acted upon.

- **10-086 / Albright**

- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (12)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

09-127

1. Misconduct/Procedure – Deputies 2 and 3 allowed a witness to transfer evidence at a crime scene.

Recommended Finding: Unfounded

Rationale: The complainant had been caught stealing tools and other equipment from another vehicle. The property owner and neighbors stopped the complainant as he attempted to flee the scene causing his truck to

collide with a parked vehicle. Prior to Deputies 2 and 3 arriving on scene the property owner retrieved some of his personal property from the complainant's truck which consisted of: a tool belt, a ratchet set, a drill bit set, and an air pump. The property owner acknowledged that he removed the property from the complainant's truck prior to the deputies' arrival. Deputies 2 and 3 denied allowing the property owner to remove any property from the complainant's vehicle. The evidence showed that the alleged act did occur, but prior to the deputies' arrival.

2. False Reporting – Deputy 2's Arrest Report contained inaccurate and conflicting information.

Recommended Finding: Action Justified

Rationale: The complainant identified statements in Deputy 2's report which were attributed to witnesses at the scene of the arrest, and later during legal proceedings that he believed to be inaccurate or conflicting. Deputy 2's report documented a number of witness statements which indicated the complainant yelled, "I have AIDS and I will bite and kill you," or words to that effect. Preliminary Examination transcripts revealed that the property owner did not hear the specific statement but had been told of the statement by other witnesses. Another witness did not use the same wording, but indicated the complainant had stated, "I will touch you." Two additional witnesses said the complainant made similar statements. Deputy 2 stated that his report was truthful and accurate and attested that the words and phrases were offered by witnesses at the scene. The evidence showed that the report submitted by Deputy 2 was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 1 said to the complainant, "I would have shot you if it had been my truck."

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied making the statement. Deputies 2 and 3 said they did not hear Deputy 1 make any such statement. There were no independent witnesses that heard the statement, and there were no audio recordings of this interaction. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputies 1, 2, and/or 3 failed to take a complaint of battery made by the complainant.

Recommended Finding: Not Sustained

Rationale: Deputies 1, 2, and 3 denied they were asked by the complainant to take a report of battery. The complainant had been caught stealing items from a truck and was detained by the vehicle owner and others prior to the arrival of Sheriff Deputies. There were no independent witnesses that heard the complainant request a police report, and there were no audio recordings of this interaction. There was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputies 1, 2, and/or 3 minimized and/or failed to immediately respond to the complainant's complaints of injury and/or requests for medical attention.

Recommended Finding: Action Justified

Rationale: The complainant stated that he was injured by the citizens that detained him prior the arrival of Deputies 1, 2, and 3. The complainant said he told deputies that he had been punched in the mouth by an unknown assailant and choked out to the point of unconsciousness. Deputies 1, 2, and 3 denied the complainant requested medical attention. Deputies 2 and 3 did report minor injuries, a light bruising on the inside of his lip and a small cut on his hand. He was cleared for incarceration after responding "No," when asked if he had been injured, hurt or in an accident in the last 72 hours. The complainant did not seek medical attention for the reported injuries until six days after booking. The evidence showed the alleged act did occur but was lawful, justified and proper.

6. Misconduct/Procedure –Deputy 2 failed to accurately document the complainant's cell phone and \$18 in a property and evidence reports.

Recommended Finding: Sustained

Rationale: Deputy 2 did not complete an inventory of the vehicle contents prior to its removal from the scene as required by Department Policy 6.37, Towing Policy, and Department Patrol Manual, Policy 34, Inventory & Storage of Suspect's Vehicle(s). Incident to the arrest Deputy 2 conducted a search of the complainant's

vehicle; however, there was no mention of cash or a cell phone. Photographic evidence showed an undetermined amount of paper money on the front seat of the complainant's vehicle; the cell phone cannot be identified on the front seat. These items were not inventoried in connection with the tow or listed with the complainant's personal property upon his arrest. The evidence supports the allegation and the act or conduct was not justified.

7. False Reporting - Deputy 2 falsified and/or fabricated information in his report to enhance charges against the complainant.

Recommended Finding: Action Justified

Rationale: Deputy 2 denied that he falsified and/or fabricated any information in his report, further stating that his arrest report was truthful and accurate. The complainant had been observed stealing tools from a vehicle and was cited for violation of Penal Code 211, Robbery. A records check during the arrest procedure revealed the complainant was on Parole for receiving stolen property and as such was also in violation of Penal Code §3056, Parole Violation, resulting in an additional charge upon booking. Deputy 2's report provided statements by witnesses to the incident resulting in the District Attorney adding the charges of PC§§ 422-Terrorist Threats, 487-Grand Theft, and 484/666-Petty Theft with a Prior. The evidence showed that Deputy 2's report was lawful, justified and proper.

11-046

1. Death Investigation/Officer-Involved Shooting – Deputy 1 shot and killed Craig Peterson, a homicide suspect.

Recommended Finding: Action Justified

Rationale: A "Be on the Lookout" bulletin was broadcast for Craig Peterson after he allegedly stabbed his employer. While on routine patrol, Deputy 1 followed the suspect vehicle and confirmed the license plate number with dispatch prior to contacting the driver. Peterson exited his vehicle, got into the truck bed and rummaged in a tool box. Then, "with a crazed look" and at a distance of approximately twenty feet, Peterson took a shooting stance and pointed a nail gun at Deputy 1. Fearing for his life, Deputy 1 reacted to the threat by discharging one round from his duty weapon striking Peterson in the neck. The evidence shows the actions taken by Deputy 1 were lawful, justified and proper.

11-055

1. Discrimination/Sexual-Gender – Deputies 8, 9 and/or Deputy 11 have regularly discriminated transgender/homosexual inmates because of their sexual orientation/gender.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force – Deputy 3 smashed an inmate's hand in the tank door causing severe swelling & pain for the inmate.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 failed to provide cleaning cart on May 6, 2011 after being asked over seven times.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Discrimination/Sex-Gender – Deputy 3 referred to a co-complainant with a derogatory term on June 20, 2011 when talking with medical staff personnel.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Discrimination/Sex-Gender – While escorting two transgender inmates for transfer Deputy 4 commented, “I’m going to miss watching you two shower.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 4 gave his cell phone number to an inmate in exchange for being allowed to see the inmate’s breasts.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Discrimination/Sex-Gender – Deputy 7 referred to transgender/homosexual inmates by saying, “Look it’s the ugliest girls in George Bailey.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Discrimination/Sex-Gender – Deputy 6 called transgender/homosexual inmates over the intercom and stated, “I’ve got a delivery of a summer sausage. Can I park it in your rear?” or words to that effect.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Discrimination/Sex-Gender – Deputy 10 passed the complainant’s cell and stated, “Oh God, Fucking Faggots. We’re surrounded by six, nasty disgusting faggots.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Discrimination/Sex-Gender - Deputies 2, 5, and 6 have on several occasions used the box to make crude comments insinuating homosexual sex acts.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

11. Discrimination/Sex-Gender - Deputy 5 would not allow transgender inmates to shower unless they were topless so he could see our chests.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

12. Misconduct/Procedure - Deputy 11 failed to take action on April 1-3, 2011, to stop sewage from entering the housing unit through drains, showers and toilets, which resulted in unsanitary conditions.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

13. Misconduct/Procedure - Deputy 11 denied inmates access to a cleaning cart April 1-3, 2011 which resulted in unsanitary conditions in the cell.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

14. Misconduct/Procedure - Deputy 11 repeatedly refused to provide aid and/or request medical attention for an inmate with a compromised immune system causing the inmate to go into distress.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

15. Misconduct/Procedure – Deputy 11 failed to satisfactorily respond to numerous grievances submitted by inmates.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

16. Misconduct/Procedure – Deputy 11 refused to notify medical staff that inmates needed treatment.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

17. Misconduct/Procedure – Deputy 11 stripped out transgendered inmates in front of male inmates, humiliating and downgrading them.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

18. Discrimination/Sexual-Gender – Deputy 11 denied inmates access to religious services because of their Sexual Orientation/Gender.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

19. Discrimination/Sexual-Gender – Deputy 11 denied inmates access to court ordered classes and programs i.e (AIDS education, GED, N/A and A/A) because of their Sexual Orientation/Gender.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

20. Misconduct/Medical – Medical Staff denied inmates necessary treatment.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

21. Misconduct/Medical – Medical Staff delivers the wrong medications to inmates.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

22. Misconduct/Medical – Medical Staff, on multiple occasions between May16-18, 2011, “runs out of AIDS cocktail” causing inmates’ distress and possible complications with disease.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

(Please note: Medical issues brought forth by the complainant do not fall within CLERB's jurisdiction and are referred back to the Sheriff's department for further investigation.)

11-110

1. False Arrest – P.O. 1 violated the complainant on an unknown date.

Recommended Finding: Action Justified

Rationale: The complainant believed P.O. 1 should not have arrested him. On February 1, 2011 the complainant was re-arrested for violation of probation Condition 6(a), Follow such course of conduct as the probation officer prescribes; Condition 6(j) required him to Register per Penal Code 290 (Sex Offender Registration); and Condition 10(j), Not Associate with Minors. Probation violations 6(a) and 6(j) were later dismissed by the courts; however Probation Department Adult Field Services, Policy & Procedures Manual 17.3.10, No Contact with Minors/Victims, authorizes Probation Officers to, "...violate or do a re-arrest of the probationer if the officer learns that the probation violated the "no contact" order with a minor/victim." By his own admission the complainant had recent contacts with a minor since his release from custody which was a probation violation. The evidence showed that the alleged act did occur but was lawful, justified and proper.

2. Discrimination/Other – P.O. 1 discriminated against the Bi-polar complainant by refusing to work with him unless he sought treatment, which was not a Probation condition.

Recommended Finding: Unfounded

Rationale: P.O. 1 first encountered the complainant when contacted via telephone by an Escondido Police Detective conducting the complainant's sex offender re-registration. P.O. 1 had been assigned the complainant's case just one day prior to this initial contact and had not yet met with or interviewed the complainant. P.O. 1 acknowledged that he inquired as to the complainant's willingness to participate in a mental health treatment program if the Court reinstated his case, to which the complainant revealed that he was Bi-polar, told P.O. 1, "...if you won't work with me, I won't work with you," and terminated the call. Evidence recorded in the Re-Arrest Report, the Probation Officer's Supplemental Report, and follow-on telephone calls, supported P.O. 1's assertion that he had been assessing the complainant's willingness to comply with probation conditions and did not support the complainant's assertion of discrimination because of his Bi-polar condition. The evidence shows the actions taken by P.O. 1 were lawful, justified, and proper, and the alleged discrimination cannot be attributed to P.O. 1.

3. Misconduct/Procedure – P.O. 1 accused the complainant of absconding prior to a scheduled appointment.

Recommended Finding: Action Justified

Rationale: The complainant said that P.O. 1 alleged he absconded from a meeting that had not yet occurred. In a telephone conversation P.O. 1 directed the complainant to meet with him at 8:30 am the following morning. The complainant became angry when questioned about his contact and relationship with a minor. He unsuccessfully attempted to negotiate a different date/time so that he could attend class at a local community college, and then abruptly terminated the call with P.O. 1. Approximately 30 minutes later the complainant contacted P.O. 1 by telephone, yelled at him, restated that he would not report as directed and made statements of his intention to harm himself. P.O. 1 considered the complainant's statements and actions as a refusal to comply with a course of conduct prescribed by P.O. 1 in order to avoid legal process, which violated probation Condition 6(a). The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – P.O. 1 neglected to "completely investigate" the complainant's alleged failure to register as a sex offender.

Recommended Finding: Action Justified

Rationale: The complainant reported to the Escondido Police Department to document a change of address as required of transient registered sex offenders. Having notified the San Diego Police Department he was relocating to North County the complainant had five days (from January 27, 2011) to complete the re-registration in the new jurisdiction. The complainant departed Escondido Police Department without completing his re-registration. The complainant was told if he left without completing his registration he would be out of compliance with Condition 6(j) of his probation conditions, PC 290 sex offender registration. The complainant stated he had returned to reschedule registration for the following day; a statement refuted by the Escondido Police Detective. P.O. 1 was given reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that the complainant had not completed his PC 290 registration and an offense had been committed. The alleged conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure - P.O. 1 obtained information from the complainant that was subsequently used against him.

Recommended Finding: Action Justified

Rationale: The complainant stated P.O. 1 contacted him to obtain information which would ultimately be used against him in court. P.O. 1 acknowledged that he talked with the complainant a number of times on matters associated with the terms of his probation and the circumstances surrounding his re-arrest. P.O. 1 ensured the complainant was aware that the telephonic communications were conducted in a probation officer/probationer status and that there was no privilege associated with information obtained from the interviews. The evidence showed that P.O. 1's actions did occur but were lawful, justified and proper.

6. Criminal Conduct - P.O. 1 recorded a conversation with the complainant without his knowledge and/or consent.

Recommended Finding: Action Justified

Rationale: The complainant stated that a telephone conversation with P.O. 1, initiated by the complainant, was recorded without notification from the Probation Officer. The call in question was initiated by the complainant from a San Diego County Detention Facility. San Diego Sheriff's Department Policy & Procedures P.17, Monitoring Telephone Calls/Visits/Mail states that all telephone calls will be automatically recorded unless the call is made to a number that has been verified by the Detentions Investigations Unit as registered to an attorney, physician, or religious advisor; and entered into the "Do Not Record" database of telephone numbers. San Diego Sheriff's Department provides meaningful notice that the calls may be monitored. The complainant acknowledged this notice and consented to the monitoring by continuing his conversation on the jail telephone. The evidence showed that recorded conversations between the complainant and P.O. 1 were permissible under federal and state law; the alleged conduct did occur but was lawful, justified and proper.

7. Criminal Conduct – P.O. 1 made false statements in reports submitted to the Court on June 17, 2011, concerning a "Static-99R."

Recommended Finding: Unfounded

Rationale: The complainant alleged that P.O. 1 committed perjury by providing the court with false reports about the completion of a Static-99R assessment, a procedure required to document the State Authorized Risk Assessment Tool for Sex Offenders. The evidence demonstrated that P.O. 1 completed a Static-99R assessment worksheet on February 28, 2011, per Probation Adult Field Services Policy and Procedures Manual, Chapter 17, Sex Offender Management Policy, and later documented that assessment in his Probation Officer's Supplemental Report. P.O. 1's statements made to the Court were consistent with documentation. A Probation Department Informational Source confirmed that P.O. 1 conducted the Static-99R assessment and documented his findings in the Supplemental Report. The evidence shows the actions taken by P.O. 1 were lawful, justified, and proper, and the alleged perjury did not occur.

11-122

1. Misconduct/Procedure – PO 2 collected and/or reported inaccurate information concerning the probationer's school credits.

Recommended Finding: Not Sustained

Rationale: PO 2 contacted the Registrar's Office at Foothill Adult School on October 20, 2011 to verify the probationer's enrollment and attendance. She was informed that the probationer signed up for class at the beginning of September 2011; attended on the 9th, but failed to attend any more classes in the month of September. The probationer attended class again on October 4th, but did not return until October 19th. As of the October 20th contact date, the Registrar's office reported that the probationer had failed to complete any of the class assignments and had not turned in any class work. PO 2 shared this update with the probationer in good faith, relying on the Registrar's staff for its accuracy. There is insufficient evidence to prove or disprove the allegation that PO 2 collected and/or reported inaccurate information.

2. Misconduct/Procedure - PO 2 failed to take appropriate action when the probationer threatened suicide.

Recommended Finding: Not Sustained

Rationale: PO 2 reported that the probationer never indicated that he wanted to hurt himself nor appeared to be suicidal. Had he made any suicidal statements she stated, she would have taken the threat seriously, and placed the probationer in a secure setting to protect his life. In the one instance when a clerk reported to PO 2 that, following a face-to-face meeting, the probationer was seen on the ground by the elevator saying that he wanted to kill himself, PO 2 and two other probation officers acted swiftly to intervene and talk with the probationer, but he had already left the premises. PO 2 attempted to counsel the probationer later that day in a follow up phone call. PO 2 provided the probationer with a number of services to proactively address the stressors he faced in his home life, school, employment search, and probation requirements. The probationer failed to avail himself to these services. That withstanding, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – PO 1 made inappropriate comments to the complainant regarding the probationer's suicide attempt.

Recommended Finding: Not Sustained

Rationale: PO 1 denied making any inappropriate comments as alleged by the complainant, and had no recollection of making any comments regarding the probationer's suicide attempt. After reviewing his contact notes, PO 1 observed that nothing was indicated that the probationer's suicide attempt was discussed in any detail during his 10/21/2011 phone conversation with the complainant. Absent a recording or witness to these alleged comments, there was insufficient evidence

11-130

1. Criminal Conduct – Deputy 1 removed money from the complainant's residence and failed to return it.

Recommended Finding: Not Sustained

Rationale: The complainant stated that \$550.00 was missing from his wallet and a nearby envelope after Deputy 1 conducted a warrant search of his residence. Deputy 1 acknowledged searching the complainant's wallet to demonstrate dominion and control over items seized from the complainant's residence, but denied removing any money from the complainant's wallet or seizing an envelope containing cash. Deputy 1 stated all items seized during the search were documented on Receipt and Inventory Forms and copies provided to the residents. A witness at the residence could not be sure if there was any cash in the complainant's wallet or in a nearby envelope prior to his arrest, and there no cash was visible in photographic evidence. There was

11-136

1. Illegal Seizure – Deputy 2 seized the complainant’s silver 2011 Acura LS on October 24, 2011.

Recommended Finding: Action Justified

Rationale: Deputy 2 conducted a traffic stop for a seatbelt violation, California Vehicle Code § 27315(d)(1), and the complainant could not produce a valid driver’s license. The complainant’s driver’s license had been suspended for multiple citations for Failure To Appear in court, and records showed he had been legally notified of the suspension on July 6, 2011. He was arrested for driving on a suspended license, a violation of California Vehicle Code § 14601.1(A), and his vehicle was towed per California Vehicle Code § 14602.6. Deputy 2’s seizure of the complainant’s vehicle per California Vehicle Code and San Diego Sheriff’s Department policy and procedure 6.37, Towing Policy was lawful, justified and proper.

2. Illegal Seizure – Deputies 1 and 3 seized the complainant’s silver 2011 Acura LS on October 24, 2011.

Recommended Finding: Unfounded

Rationale: Deputies 1 and 3 were present during the traffic stop which resulted in the complainant’s arrest and the towing of his vehicle. Deputy 2 arrested the complainant and processed the vehicle for towing. The evidence showed that Deputies 1 and 3 did not seize the complainant’s vehicle.

11-137

1. False Reporting – Deputy 1 reported the complainant’s equipment stolen and abandoned.

Recommended Finding: Unfounded

Rationale: The complainant believed that Deputy 1 had reported his landscaping equipment, a trencher and transport trailer, as stolen or abandoned. Deputy 1 did not report the complainant’s equipment had been stolen. Deputy 1 did report the theft of a toy hauler trailer which was later recovered by Deputies 2 and 3. The complainant’s landscaping equipment was found in the vicinity of the stolen toy hauler trailer, but no reports were generated that identified the equipment as stolen or abandoned. The evidence showed that Deputy 1 did not report the complainant’s equipment as stolen or abandoned.

2. Illegal Seizure/Vehicle – Deputy 2 ordered the complainant’s equipment to be confiscated.

Recommended Finding: Not Sustained

Rationale: The complainant had been told that deputies ordered his landscaping equipment to be seized. Deputy 2 observed the complainant’s equipment on property where a stolen trailer had been recovered. He attempted to determine the owner of the equipment and learned that it had been sold to a local Home Depot. Home Depot could not readily identify whether or not they still owned the equipment. The local Home Depot store manager stated that an unidentified deputy called and said they had found a trencher that had been reported stolen and directed the manager to the location to retrieve the equipment. Deputy 2 denied that he directed Home Depot personnel to confiscate the equipment, suggesting to the manager that it may have been stolen or abandoned and that they could check the equipment the following day. Home Depot retrieved the property the following day and retained the equipment until reclaimed by the complainant. There was insufficient evidence to prove or disprove that the alleged acts occurred.

3. Misconduct/Procedure – Deputies 2 and 3 failed to provide documentation of equipment seizure.

Recommended Finding: Action Justified

Rationale: Deputy 2 contacted the Home Depot store manager and reported that some Home Depot equipment had been located and it may have been stolen or abandoned. Deputies 2 and 3 did not take custody of the

property or generate any reports because the equipment they observed had not been reported lost or stolen and they believed they had contacted the rightful owner. The equipment was retrieved by Home Depot the following day. The evidence showed that the alleged conduct of Deputies 2 and 3 did occur but was lawful, justified and proper.

11-138

1. Illegal Search & Seizure – Deputies 1 and/or 2 ordered the complainant off of his bike and demanded his ID without cause.

Recommended Finding: Action Justified

Rationale: While working special detail, Deputies 1 and 2 encountered the complainant riding his bicycle on a sidewalk in Imperial Beach; a violation of a Municipal Code. After activating lights and siren, the complainant stopped and dismounted the bike. Deputy 1 attained the complainant's identification for a records check. The evidence shows the alleged act or conduct occurred and was lawful, justified and proper.

2. Illegal Search & Seizure – Deputies 1 and/or 2 searched the complainant's wallet and clothes after he said "No."

Recommended Finding: Action Justified

Rationale: Normally, a search is not permitted unless deputies have consent, are concerned about a possible weapon, have "probable cause" to arrest and/or search, or the suspect was given the opportunity to cooperate but refused. If a suspect admits they have identification, but refuse to produce it, a limited search is permissible. Incident to a lawful custodial arrest, deputies are entitled to search the arrestee's person, the area around him, and the area and objects under their immediate control. A search enables officers to safeguard evidence and ensure their safety during the process of arrest. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Intimidation – Deputies 1 and/or 2 said, "Let's just 86 his ass down," when he questioned why they wanted to "talk in private."

Recommended Finding: Not Sustained

Rationale: "86" is an urban expression meaning, "to remove, end usage, or take something out or away." Sheriff's policy prohibits the use of profanity. Both deputies denied making this type of statement, and the complainant offered no further witnesses or audio evidence to corroborate what was said by whom. There is insufficient information to prove or disprove this allegation.

4. False Arrest – Deputies 1 and/or 2 arrested the complainant for being drunk.

Recommended Finding: Action Justified

Rationale: Deputy 2 observed the complainant with the following objective symptoms of intoxication: Bloodshot/reddened eyes, elevated pulse rate, rapid eyelid flutter, cotton mouth, and/or the odor of marijuana. Deputy 2 determined the complainant was unable to care for his own safety and arrested him for being 647(f), Under the Influence. The evidence shows Deputy 2's conduct was lawful, justified and proper.

5. Misconduct/Procedure – Deputies 1 and/or 2 denied the complainant a breathalyzer, blood, or urine test to prove his innocence of being drunk.

Recommended Finding: Action Justified

Rationale: Implied consent is the principle that, by driving your car on the public roadways, you agree to take "chemical tests," such as a blood, breath or urine test, if you are arrested as an impaired driver. Chemical tests are performed for violating the vehicle code while under the influence and there is no requirement for administering these test types for public intoxication. The evidence shows the deputies' conduct was lawful, justified and proper.

11-143

1. Misconduct/Procedure – Deputy 1 kept the complainant in custody past his release date.

Recommended Finding: Summary Dismissal

Rationale: Release date calculations are performed by Detentions Processing Technicians, under the supervision of Detentions Processing Supervisors, who are non-sworn employees of the San Diego County Sheriff's Department. The Review Board does not have jurisdiction over this class of employees.

2. Misconduct/Procedure – Deputy 1 declined to review the complainant's grievance concerning his release from custody.

Recommended Finding: Unfounded

Rationale: The complainant did not file a grievance regarding his complaint of being held in custody past his release date. He was reportedly misinformed by an unidentified deputy regarding his right to file a grievance, and without a written grievance on file, a review of the complainant's claim could not have been conducted. The evidence shows that the alleged act did not occur.

12-042

1. Excessive Force – Deputy 1 grabbed the complainant's arm and slammed her onto a counter before cuffing her.

Recommended Finding: Action Justified

Rationale: Deputy 1 encountered active resistance from the complainant when he took hold of her arm and attempted to escort her out of a Wal-Mart store. Deputy 1 employed department approved Use of Force control compliance techniques which included: verbal commands and empty hand control holds to lawfully detain and arrest the complainant. Deputy 1 stated that while attempting to control the complainant, their bodies' momentum moved them forward and into a nearby counter. Surveillance video showed the complainant moved into the counter, but does not indicate movement with excessive force. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

2. False Arrest – Deputy 1 arrested the complainant for "delaying" him.

Recommended Finding: Action Justified

Rationale: The complainant was asked several times by Wal-Mart management to leave the premises, but refused, in violation of California Penal Code 602: Trespassing. When Deputy 1 attempted to escort the complainant outside, she resisted by pulling away. Pursuant to California Penal Code 148: Resist, Obstruct, Delay of Peace Officer or EMT, "Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment" is guilty of a misdemeanor and subject to arrest. Deputy 1 acted within the law in effectuating this arrest. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

12-115

1. Excessive Force – Deputy 1 grabbed the complainant's arms/wrists, which resulted in bruises.

Recommended Finding: Summary Dismissal

Rationale: The involved member was identified as a San Diego Police Department (SDPD) officer over whom CLERB does not have jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority.

2. Misconduct/Intimidation – Deputy 1 "intimidated" the complainant when he yelled and threatened her with

incarceration.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search & Seizure – Deputy 1 searched the complainant's and a friend's purse.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 1 gave the complainant citations for “glass on the beach and littering.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

End of Report